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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 FEDERAL NATIONAL MORTGAGE
12 ASSOCIATION, a government-sponsored
entity; FEDERAL HOUSING FINANCE
13 AGENCY, as Conservator of Fannie Mae,

14 Plaintiffs

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
Nevada Limited Liability Company; SUN
17 CITY ALIANTE COMMUNITY
ASSOCIATION, a Nevada Non-Profit
18 Corporation; DOES I through X and ROE
CORPORATIONS I through X, inclusive,

19 Defendants,
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Case No.: 2:14-cv-02046-JAD-PAL

DEFENDANT SUN CITY ALIANTE
COMMUNITY ASSOCIATION'S REPLY
IN SUPPORT OF ITS MOTION TO
DISMISS

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DEFENDANT SUN CITY ALIANTE COMMUNITY ASSOCIATION'S REPLY IN
SUPPORT OF ITS MOTION TO DISMISS

Defendant SUN CITY ALIANTE COMMUNITY ASSOCIATION (hereinafter "HOA"),
by and through its attorneys of record, Weil & Drage, APC, hereby files its Reply in Support of its
Motion to Dismiss.

This Reply is based upon the attached Memorandum of Points and Authorities, all
pleadings and papers on file herein and any oral argument this Court will entertain at the hearing
on this matter.

DATED this 17th day of April, 2015.

WEIL & DRAGE, APC

/s/ C. Robert Peterson, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. The provisions of 12 U.S.C. §4617(j)(3) do not apply.

Plaintiffs assert that the “property protection” provision in 12 U.S.C. §4617(j)(3) prevented the HOA from selling the Property “without the consent of the Agency.” However, Plaintiffs misread and improperly apply said provision. When properly read in the context of 12 U.S.C. §4617 as a whole, the language in subsection (j)(3) does not apply to the HOA’s nonjudicial foreclosure of its super priority lien against the Property.

By reading subsection (j)(3) out of context with the other provisions of 12 U.S.C. §4617(j), Plaintiffs seek to have this Court apply same to a situation never contemplated by Congress. The United States Supreme Court has applied the following: 1) “The plainness or ambiguity of statutory language is determined by reference to the language itself, **the specific context in which that language is used**, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); 2) “In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as **the language and design of the statute as a whole**.” *Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); and 3) “In determining the meaning of the statute, we look not only to the particular statutory language, but **to the design of the statute as a whole and to its object and policy**.” *Crandon v. United States*, 494 U.S. 152, 158 (1990). (emphasis added)

The heading for subsection (j) of 12 U.S.C. §4617 reads “Other Agency exemptions.” The heading for subparagraph 1 of 12 U.S.C. §4617(j) is “Applicability,” and said subparagraph reads “[t]he **provisions of this subsection shall apply with respect to the Agency** in any case in which the Agency is acting as a conservator or receiver.” (emphasis added) 12 U.S.C. §4502(2) defines the term “Agency” to mean “the Federal Housing Finance Agency established under section 4511 of this title.” 12 U.S.C. §4502(20) defines the term “regulated entity” to mean “the Federal National Mortgage Association and any affiliate thereof.” Here, as stated within Plaintiffs’ own

1 Opposition, Pulte Mortgage, LLC assigned its deed of trust to Fannie Mae (the “regulated entity”)
 2 and not to FHFA (the “Agency”).

3 Further, 12 U.S.C. §4617(j)(2) is entitled “Taxation,” and reads as follows:

4 The **Agency, including its franchise, its capital, reserves, and surplus, and**
 5 **its income,** shall be exempt from all taxation imposed by any State, county,
 6 **municipality, or local taxing authority,** except that **any real property of the**
 7 **Agency** shall be subject to State, territorial, county, municipal, or local taxing
 8 taxation to same extent according to its value as other real property is taxed,
 9 except that, notwithstanding the failure of any person to challenge an assessment
 10 under State law of the value of such property, and the tax thereon, shall be
 11 determined as of the period for which such tax is imposed, (emphasis added)

12 Subparagraph (2) of Section 4617(j) provides the Agency (not Fannie Mae) with an
 13 “exemption” **from all taxation** except for real property taxes assessed against “any real property
 14 of the Agency.” This does not exempt the Agency or any real property of the Agency from claims
 15 or liens by a person or entity other than “any State, county, municipality, or local taxing
 16 authority.” There is absolutely nothing within said subparagraph granting the Agency or its real
 17 property any exemption from attachment or foreclosure of an HOA assessment lien.

18 Subparagraph (4) of Section 4617(j) relates to “Penalties and fines” and states:

19 The Agency shall not be liable for any amounts in the nature of penalties or
 20 fines, including those arising from the failure of any person to pay **any real**
 21 **property, personal property, probate, or recording tax** or any recording or
 22 filing fees when due. (emphasis added)

23 Subparagraph (3) of 12 U.S.C. §4617(j) should be read in the context of the surrounding
 24 subparagraphs (2) and (4). Said paragraph states:

25 No property of the Agency shall be subject to levy, attachment, garnishment,
 26 foreclosure, or sale without the consent of the Agency, nor shall any involuntary
 27 lien attach to the property of the Agency, (emphasis added)

28 By taking the language of subsection (j)(3) out of context, Plaintiffs assert that this
 language exempts the Property from the nonjudicial foreclosure of the assessment lien recorded by
 the HOA and mandatory mediation or arbitration pursuant to NRS 38.310. However, as Fannie
 Mae is **not** the Agency, 12 U.S.C. §4617(j)(3) does not apply. Therefore, Plaintiffs’ argument
 fails, as the wrongful foreclosure claim is certainly not based on inapplicable federal law, but
 instead, subject to NRS 38.310.

B. The wrongful foreclosure claim is improper.

Wrongful foreclosure is a tort designed to attack the authority behind a foreclosure as opposed to the act of foreclosure itself. *McKnight Family, L.L.P. v. Adept Mgmt.*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 559 (2013). Further, the Nevada Supreme Court has stated that such an action will lie only if “the trustor or mortgagor can establish that at the time the power of sale was exercised or the foreclosure occurred, no breach of condition or failure of performance existed on the mortgagor’s or trustor’s part which would have *authorized the foreclosure or exercise of the power of sale.*” *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983)(emphasis added). Consequently, it follows that if the authority of the foreclosure is not being challenged, a wrongful foreclosure claim is improper.

Here, Plaintiffs concede that they “do not challenge Sun City’s assessments or Sun City’s *authority to place a lien on the Property.*” Plaintiffs’ Opposition, Pg. 6, Lines 11-12. Therefore, Plaintiffs defeat their own claim. Plaintiffs’ wrongful foreclosure claim should be dismissed.

C. The wrongful foreclosure claim does not relate to title.

In an attempt to save their cause of action and circumvent the clear language of NRS 38.310, Plaintiffs argue that the wrongful foreclosure claim relates specifically to title. Wrongful foreclosure has nothing to do with who holds superior title to the Property. If Plaintiffs wished to quiet title against the HOA, they should have included said claim against the HOA to begin with. Instead, Plaintiffs asserted their quiet title claim against SFR only. However, even if Plaintiffs asserted said claim against the HOA, it fails. The HOA does not make any claim on title to the Property.

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II. CONCLUSION

For the foregoing reasons, this Court should grant HOA's Motion to Dismiss.

DATED this 17th day of April, 2015.

WEIL & DRAGE, APC

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 17th day of April, 2015, a true and correct copy of this Substitution of Attorneys was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail:

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